

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JJY ENTERPRISE, LLC, a Washington limited
liability company,

Plaintiff,

vs.

LIBERTY MUTUAL INSURANCE
COMPANY, a mutual insurance corporation,

Defendant.

No.

NOTICE OF REMOVAL OF
CIVIL ACTION UNDER
28 U.S.C. §1441(A)

(REMOVED FROM GRAYS HARBOR
COUNTY SUPERIOR COURT CAUSE
NO. 21-2-00418-14)

TO: CLERK OF COURT

AND TO: Plaintiffs, by and through their counsel of record.

PLEASE TAKE NOTICE that Defendant Liberty Mutual Insurance Company (“Liberty Mutual”) hereby removes to this Court the state court action described below on the grounds stated herein and as supported by the Declaration of Jennifer E. Aragon and the exhibits attached thereto.

I. INTRODUCTION AND STATEMENT OF FACTS

On or about August 26, 2021, plaintiff commenced a lawsuit in Grays Harbor County Superior Court titled *JJY Enterprise, LLC v. Liberty Mutual Insurance Company*, Grays Harbor County Superior Court No. 21-2-00418-14. *Declaration of Jennifer Aragon, Exhibit A, Summons*

NOTICE OF REMOVAL OF CIVIL ACTION UNDER
28 U.S.C. §1441(A) – 1

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1 *and Complaint*. Service was accomplished on the Office of the Insurance Commissioner on August
 2 26, 2021, and Liberty Mutual received notice of this action vis-à-vis service on OIC on August 26,
 3 2021. *Id.* Plaintiff's lawsuit arises from a claim presented by the plaintiff to Ohio Security
 4 Insurance Company pursuant to a business policy, for damages to property owned by JJY
 5 Enterprises, LLC on or about December 7, 2019.

6 Upon information and belief, the plaintiff claims damages in excess of \$75,000.

7 This Notice of Removal is timely under 28 U.S.C. §1446(b) because it is being filed
 8 "...within thirty days after receipt by the defendant, through service or otherwise, of a copy of
 9 other paper form which it may first be ascertained that the case is one which is or has become
 10 removable..." 28 U.S.C. §1446(b).

11 This matter arises from a claim presented by the Plaintiff on or about December 7, 2019,
 12 related to fire damage at plaintiff's business Scoops Ice Cream and Coffee. At the time suit was
 13 filed, plaintiff had demanded \$75,000 from Ohio Security for equipment in the business that was
 14 bolted down. In addition, the plaintiff claimed to be entitled to lost rent totaling \$130,000. *Aragon*
 15 *Decl. Ex. B.*

16 **II. BASIS FOR REMOVAL**

17 **A. There Is Complete Diversity of Citizenship Under 28 U.S.C. §1332**

18 This case is a civil action for which this Court has original jurisdiction under 28 U.S.C.
 19 §1332(a)(1), and is one which can be removed to this Court by defendant under 28 U.S.C. §1441(a)
 20 and (b) because it is a civil action between citizens of different states and the amount in controversy
 21 based upon plaintiff's causes of action and damages described exceeds \$75,000.00.

22 **B. The Amount In Controversy Exceeds the Jurisdictional Minimum**

23 The Complaint does not specify an amount in controversy. Where the amount in

controversy is not clear from the Complaint, the defendant may verify satisfaction of the requirement by establishing, by a preponderance of evidence, that the amount in controversy requirement has been satisfied. *Lim v. National General Ins. Co.*, 2015 WL 12025326 *1 (2015), citing, *Sanchez v. Monumental Life Ins. Co.*, 102 F. 3d 398, 403-04 (1996). A defendant can meet this burden by presenting “summary-judgment-type evidence” relevant to the amount in controversy at the time of removal. *Lim v. National General Ins. Co.*, 2015 WL 12025326 *1 (2015), citing, *Koske v. U.S. Bank Corp.* 432 F. 2d 976, 980 (2005).

Pursuant to Ninth Circuit authority, including that of Washington State District Courts, attorney’s fees and treble damages that are being sought in the litigation are included in determining whether the requisite \$75,000 amount in controversy requirement of 28 U.S.C. §1332 has been satisfied. *Lim v. National General Ins. Co.*, 2015 WL 1225326 *1, *3 (2015), citing, *Koske v. U.S. Bank Corp.* 432 F. 2d 976, 980 (2005).

Here, upon information and belief, the plaintiffs are seeking \$75,000.00 in contractual damages for equipment that had been bolted down, as well as \$130,000.00 in lost rent from defendant Liberty Mutual. *Aragon Decl. Ex. B.* Plaintiff’s complaint asserts a claim for IFCA benefits, seeking treble damages which would total \$615,000.00. Plaintiff also seeks unspecified damages under a cause of action for Insurance Bad Faith. *Aragon Decl. Ex. A.* Based on the foregoing, the amount in controversy exceeds the jurisdictional minimum of \$75,000.00.

C. This Notice of Removal Is Timely Under 28 U.S.C. §1446(b)

This Notice of Removal is timely under 28 U.S.C. §1446(b) because it is being filed “...within thirty days after receipt by the defendant, through service or otherwise, of a copy of other paper form which it may first be ascertained that the case is one which is or has become removable...” 28 U.S.C. §1446(b). Liberty Mutual is deemed to have received notice on August

26, 2021, the date the complaint was served on OIC. Liberty Mutual's Notice of Removal is timely.

D. This Notice of Removal Complies with the Applicable Local Rules and Venue Is Proper in the Western District of Washington Under 28 U.S.C. §128(a)

This Notice of Removal complies with all applicable Federal Rules of Civil Procedure and Local Rules. Liberty Mutual has attached to this Declaration of Jennifer E. Aragon, filed in support of this Notice, copies of all process, pleadings, and orders served upon it in the state court action, as required by 28 U.S.C. §1446. Venue is proper in this District pursuant to 28 U.S.C. §§128(b) and 1391, because this District encompasses Grays Harbor County, the county listed in the state court the Complaint that was filed and served on Liberty Mutual.

Liberty Mutual is serving Plaintiffs with copies of this Notice of Removal and the supporting Declaration of Jennifer E. Aragon (with exhibits).

Liberty Mutual is also promptly filing with the Clerk of Grays Harbor County Superior Court of the State of Washington a copy of this Notice of Removal, along with a notice to Superior Court of filing the Notice of Removal. Liberty Mutual respectfully submits that removal of this case to the United States District Court for the Western District of Washington is proper.

RESPECTFULLY SUBMITTED this 27th day of September, 2021.

FORSBERG & UMLAUF, P.S.

s/Matthew S. Adams

Matthew S. Adams, WSBA No. 18820

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s/Jennifer E. Aragon

Jennifer E. Aragon, WSBA No. 45270

E-mail: JAragon@FoUm.law

Attorneys for Defendant Liberty Mutual Insurance Company

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing ***NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. §1441(A)*** on the following individuals in the manner indicated:

Mr. Jeff Smyth
Smythe & Mason, PLLC
1325 Fourth Avenue, Suite 940
Seattle, WA 98104
Email: jeff@smythlaw.com

(X) Via U.S. Mail
(X) Via Hand Delivery
() Via Email

SIGNED this 27th day of September, 2021, at Seattle, Washington.

s/Barbara Petro
Barbara Petro